



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 24, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-04175

Dear Ms. Lentz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 373444.

The Williamson County Sheriff's Office (the "sheriff") received a request for paperwork, video, and audio regarding the discipline, investigation, human resources complaints, reports or concerns regarding a specified sheriff employee. You claim that the submitted information is exempted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. See Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); see also Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. See Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. We note that supervisors are not witnesses for purposes of *Ellen*, and thus supervisors' identities may generally not be withheld under section 552.101 and common-law privacy. In addition, since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, the identity of the individual accused of sexual harassment is not protected from public disclosure. See Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

The submitted information contains a completed sexual harassment investigation. Upon review, we find the submitted information includes an adequate summary of the investigation and a statement of the accused, which we have marked. Thus, the summary and the statement of the accused are not confidential. However, we note information within the summary and statement of the accused that identifies the victim is confidential under common-law privacy. See *Ellen*, 840 S.W.2d at 525. Accordingly, the sheriff must withhold the information we have marked in the summary and in the statement of the accused under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*. Further, the sheriff must withhold the additional records of the sexual harassment

investigation we have marked under 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.²

The sheriff also claims that a portion of the remaining information, which does not pertain to the sexual harassment investigation, is also confidential under common-law privacy. This office has stated that there is a legitimate public interest in the qualifications of persons who seek public employment, as well as the hiring practices of governmental entities. *See generally* Open Records Decisions Nos. 542 at 5 (1990) (information regarding the qualifications of a public employee is of legitimate concern to the public), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 at 9 (1987) (public has a legitimate interest in knowing applicants' past employment record and their suitability for the employment position in question). Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing. We also find the remaining information is of legitimate public interest. Therefore, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). Section 552.117 only applies to records that a governmental body is holding in an employment capacity. We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). In this case, it is unclear whether the individuals whose personal information we have marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individuals at issue are licensed peace officers as defined by article 2.12 and the sheriff holds the information of these individuals in an employment capacity, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the sheriff may only withhold the personal cellular telephone numbers we have marked if the cellular services were paid for with personal funds.

²As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

If the individuals at issue are not licensed peace officers, then their personal information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff may only withhold information under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals at issue timely elected to keep their personal information confidential and the sheriff holds the information of these individuals in an employment capacity, the sheriff must withhold the information we have marked under section 552.117(a)(1). Otherwise, this information may not be withheld under section 552.117.³

Next, we note a portion of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The remaining information may include the personal information of licensed peace officers who are not sheriff employees. To the extent these individuals are currently licensed peace officers who elect to restrict public access to their personal information, the sheriff must withhold the information we have marked under section 552.1175. To the extent any of these individuals are not currently licensed peace officers who elect to restrict public access to their personal information, the sheriff may not withhold the information we have marked pertaining to that individual under section 552.1175.

³Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Next, you claim some of the remaining information is confidential under section 552.130, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Therefore, the sheriff must withhold the Texas driver's license number you have marked under section 552.130 of the Government Code.⁴

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. You inform us that the information you have marked relates to undercover narcotics officers. You represent that release of the names of the officers and the telephone extension number at issue would subject those officers to a "substantial threat of physical harm." Based on your representations, we find that the sheriff has demonstrated that release of the information you have marked would subject those officers to a substantial threat of physical harm. We, therefore, conclude that the sheriff must withhold the officers' names and telephone extension number you have marked under section 552.151.

In summary, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The sheriff must withhold the personal information we have marked under section 552.117(a)(2), to the extent the individuals whose information is at issue are licensed peace officers. If the individuals whose information is at issue are not licensed peace officers, the sheriff must withhold the personal information we have marked under section 552.117(a)(1) if they timely elected to keep personal information confidential. The sheriff must withhold the information we have marked under section 552.1175 to the extent the individuals to which the information pertains are currently licensed peace officers who elect to restrict public access to their personal information. The sheriff must withhold the Texas driver's license number you have marked under section 552.130. The sheriff must withhold the officers' names and telephone extension number you have marked under section 552.151. The remaining information must be released to the requestor.⁵

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 373444

Enc. Submitted documents

c: Requestor
(w/o enclosures)